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BUREAU OF LAND MANAGEMENT
DIVISION OF RANGELAND RESOURCES
WASHINGTON, D.C. 20240

DEPARTMENT OF THE INTERIOR

DIGEST OF GRAZING DECISIONS

1959—19~~78~~ 79 83 (MARch)

This digest is designed to provide an update to the U.S. Department of the Interior Grazing Decisions 1936-1958, compiled by Dent D. Dalby, published by Superintendant of Documents, U.S. Government Printing Office, 1959.

Passage of the Federal Land Policy and Management Act of 1976, (BLM Organic Act), amendment and modifications of the Taylor Grazing Act, and Department-related regulations could render some of the cases cited as not applicable.

Decisions and opinions of the Department are available and copies may be obtained from the Office of Hearings and Appeals or the Office of the Solicitor.

Compiled by Byron N. Van Zandt

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1. General

.2 Authority of Subordinate Officials

Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. Protection and management of Federal range lands is a continuing responsibility and may not be divested through agreement with a private party. An allotment management plan is not such a permanently binding contract that the grazing user's refusal to agree to changes precludes BLM from modifying or vacating the plan upon a finding, rationally based, that the plan is inconsistent with BLM objectives and good range management.

Bert M. Smith, Paul Smith v. Bureau of Land Management, 48 IBLA 385 (July 11, 1980)

2 Adjudication

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

Implementation of the Taylor Grazing Act of 1934, as amended, is committed to the discretion of the Secretary of the Interior. An adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with the provisions of the Federal range code for grazing, 43 CFR Part 4100.

Eugene Allen, Lloyd Chappell v. Bureau of Land Management; Alfred Glen Deleeuw v. Bureau of Land Management, 65 IBLA 196 (June 29, 1982)

An appeal relating to grazing administration is properly dismissed by an Administrative Law Judge where the only issues in dispute are clearly defined in the regulations in 43 CFR Subpart 4100, which were correctly followed and applied by the Bureau of Land Management. Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Buskin Lines, Jr. v. Bureau of Land Management, 66 IBLA 109 (Aug. 10, 1982)

A determination by the Bureau of Land Management of the carrying capacity for a unit of the Federal range will be reversed where substantial evidence establishes error in the determination.

Chris Claridge v. Bureau of Land Management, 71 IBLA 46 (Feb. 18, 1983)

3. APPEAL PROCEDURES

.1 Right of Appeal

Where the Bureau of Land Management authorized officer issues a decision determining the grazing privileges of two conflicting applicants which is adverse to one of the applicants, and that applicant appeals to an Administrative Law Judge and receives a favorable decision, the failure of the other applicant to participate in the proceedings before the Administrative Law Judge does not foreclose that applicant from appealing that decision to the Board of Land Appeals, as that applicant is a party to a case adversely affected by a decision of an Administrative Law Judge within the meaning of 43 CFR 4.410.

Bureau of Land Management v. Alfredo R. Baez, 67 IBLA 89 (Sept. 13, 1982)

3. Appeal Procedures

.5 Hearings and Hearing Examiners

Settlement agreements compromising prior trespasses may be considered an admission of liability only where, by the terms of a settlement, liability is admitted. Where, however, liability has been initially determined in a Departmental adjudication, such a determination is properly considered in a subsequent hearing. As probative of the issue of "repeated" violations, absent a stipulated settlement which expressly vacates the factual determinations made in the prior adjudication.

Holland Livestock Ranch and John J. Casey, 52 IBLA 326 (Feb. 19, 1981)
88 I.D. 275

3. Appeal Procedures

.6 Burden of Proof

~~Appeals~~

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bert N. Smith, Paul Smith v. Bureau of Land Management, 48 IBLA 385 (July 11, 1980)

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

An appeal relating to grazing administration is properly dismissed by an Administrative Law Judge where the only issues in dispute are clearly defined in the regulations in 43 CFR Subpart 4100, which were correctly followed and applied by the Bureau of Land Management. Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Ruskin Lines, Jr. v. Bureau of Land Management, 66 IBLA 109 (Aug. 10, 1982)

3 Appeal Procedures

.7 Sufficiency and Weight of Evidence

An appeal from a decision of an administrative law judge dismissing an appeal relating to grazing privileges for failure to state clearly and concisely the reasons for appeal will be dismissed where appellant does not clearly show error in the decision being appealed.

Randall Brady, 42 IBLA 381 (Aug. 31, 1979)

A decision of the Bureau of Land Management which does not reduce applicant's grazing use on an allotment but which restricts such use to the primary grazing season and precludes limited use during the winter will be sustained as an exercise of the discretionary authority to manage grazing lands where the record establishes a rational basis for that decision consistent with range management objectives.

Hugh A. Tipton, 55 IBLA 68 (June 1, 1981)

A decision of a district manager involving the exercise of administrative discretion in the fulfillment of the purposes of the Taylor Grazing Act, 43 U.S.C. § 315a (1976), will be affirmed where there is a rational basis for the action, and where appellant has not shown by a preponderance of the evidence that the action was arbitrary or capricious.

Arthur J. Cook (Appellant), Bureau of Land Management (Respondent), Daniel Russell (Intervenor), 64 IBLA 293 (June 7, 1982)

Where facts and law are properly set forth and applied in Administrative Law Judge's decision dismissing an appeal from the BLM District Manager's rejection of appellant's grazing application, and appellant has made no showing that the decision is in error, the decision may be adopted by the Board of Land Appeals and affirmed.

John Espil, 65 IBLA 231 (July 9, 1982)

Where facts and law are properly set forth and applied in Administrative Law Judge's decision affirming the BLM District Manager's decision requiring appellant to maintain a drift fence on public land within his grazing area, and appellant has made no showing that the decision is in error, the decision will be affirmed.

John J. Casey, 66 IBLA 332 (Aug. 26, 1982)

4. Apportionment of the Federal Range

2. Use and Boundary Agreements

Where grazing licensees have executed a valid range line agreement approved by this Department, such an agreement has generally been treated by the Department as an enforceable contract. Therefore, those items specifically spelled out in the agreement which are unmistakably clear are binding upon the parties unless changed by their mutual consent with the approval of the Bureau of Land Management.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

4. APPORTIONMENT OF THE FEDERAL RANGE

.6 SEASON of USE

ADJUDICATION

A decision of the Bureau of Land Management which does not reduce applicant's grazing use on an allotment but which restricts such use to the primary grazing season and precludes limited use during the winter will be sustained as an exercise of the discretionary authority to manage grazing lands where the record establishes a rational basis for that decision consistent with range management objectives.

Hugh A. Tipton, 55 IBLA 68 (June 1, 1981)

5 BASE PROPERTY

.1 Ownership or Control

Where a grazing permittee owned base property taken in condemnation proceedings by the United States, but a Federal district court has stayed the United States from taking exclusive possession of the property and granted joint possession to the condemnor agency and the permittee pending disposition of an appeal on a motion to revest the property in the permittee, implementation of a decision canceling grazing privileges for loss of control of base property under 43 CFR 4110.1 (1975) will be stayed in accordance with the court order.

Bureau of Land Management v. William J. Thomas, 41 IBLA 110 (June 11, 1979)

The loss of ownership or control of base property results in the loss of grazing privileges attached thereto and requires the cancellation of the license, in the absence of a timely application for transfer of grazing privileges to new base property.

Jimmie and Leona Ferrara, 47 IBLA 335 (May 21, 1980)

7 Cancellation and Reduction

.1 Reduction as Penalty

An administrative law judge's finding that trespasses were willful, grossly negligent, and repeated will not be disturbed on appeal where the record amply supports such finding.

Where penalties imposed by two administrative law judges for trespasses are supported by the records and comport with the proscriptions of the regulations they will not be modified on appeal except insofar as they conflict with respect to a particular grazier in a particular grazing district.

Bureau of Land Management v. Holland Livestock Ranch et al., 39 IBLA 272 (Feb. 15, 1979) 86 I.D. 133

A motion to dismiss an appeal from a decision of the District Manager is properly granted pursuant to 43 CFR 4.470 where the arguments set forth by an applicant for a grazing license or permit are immaterial to the issue of whether the applicant has previously made substantial use of his grazing privileges.

Floyd and Corwin Silva, 45 IBLA 11 (Jan. 8, 1980)

An Administrative Law Judge's finding that trespasses were willful, grossly negligent, and repeated will not be disturbed on appeal where the record amply supports such finding.

Where penalties imposed by an Administrative Law Judge for trespasses are supported by the record and comport with the proscriptions of the regulations they will not be modified on appeal unless it appears that they are unreasonable, inequitable, or otherwise inappropriate.

Bureau of Land Management v. Holland Livestock Ranch and John J. Casey, 54 IBLA 247 (Apr. 27, 1981)

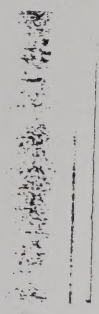
7. Cancellation and Reduction

.2. To conform with Base Property Qualifications

The loss of ownership or control of base property results in the loss of grazing privileges attached thereto and requires the cancellation of the license, in the absence of a timely application for transfer of grazing privileges to new base property.

Even if it be established that the Department had not applied in previous years regulation 43 CFR 4115.2-1(e)(8) (1975), which requires termination of grazing privileges upon loss of ownership or control of base property, such failure to apply the regulation is not authority to further disregard the regulation.

Jimmie and Leona Ferrara, 47 IBLA 335 (May 21, 1980)



7. Cancellation and Reduction

7.3 To Conform with Grazing Capacity of Federal Range

BLM may temporarily suspend portions of maximum allowable active grazing preferences under 43 CFR 4110.3-2(a) authorizing suspensions in cases of "drought, fire, or other natural causes," in order to provide forage for excess wild horses.

Bar X Sheep Co. et al., 56 IBLA 258 (July 24, 1981)
88 I.D. 665

7. Cancellation and Reduction

.4 Reduced Area of Use

Where BLM renewed an Alaska grazing lease on lands for which the State of Alaska had previously filed a selection application, and where it first expressly advised the lessee that his lease would be subject to cancellation when the State's application was resolved, BLM may cancel the lease following tentative approval of the State selection application preparatory to transferring control over the lands to the State, as 43 CFR 4230.1 gives it the authority to cancel Alaska grazing leases to permit utilization of the land for other purposes in the public interest.

Estate of C. Walter Keaster, 47 IBLA 363 (May 21, 1980)

8 Construction and Improvement Permits.

Where an applicant for a range improvement project involving alteration of the native range by reseeding with non-native species and requiring the expenditure of a large sum of public funds does not show that there is an urgent situation requiring immediate improvement of the range as proposed, a decision by the BLM range manager denying the application because management framework and allotment management plans have not been formulated is properly affirmed, as, ordinarily, such a venture should not be undertaken without the type of information these plans are intended to provide.

Lord Sorensen, Yes L. Sorensen, Kenneth Jones, 41 IBLA 354 (July 20, 1979)

Where facts and law are properly set forth and applied in Administrative Law Judge's decision affirming the BLM District Manager's decision requiring appellant to maintain a drift fence on public land within his grazing area, and appellant has made no showing that the decision is in error, the decision will be affirmed.

John J. Casey, 66 IBLA 332 (Aug. 26, 1982)

10. FREE USE

Decisions rejecting applications for a free-use and a fee grazing permit are properly upheld where the applicant does not meet the qualifications for a free-use permit under 43 CFR 4130.3 and where the entire adjudicated grazing capacity of the allotments involved has been allocated to other permittees and uses.

Kent Gregersen v. Bureau of Land Management, 61 IBLA 381 (Feb. 17, 1982)

11 Licences and Permits

GENERALLY

Estoppel to preclude a charge of trespass is not invoked against BLM where BLM's partially completed fences on Federal land do not restrain cattle and there is no evidence that BLM agreed to construct and/or maintain said fences for the benefit of the grazier, and such grazier was at all times aware of these facts.

The grazing regulations (43 CFR 4140.1(b)(1), inter alia) (formerly 43 CFR 4112.3-1(a) and (b)) place the responsibility of controlling cattle squarely on the grazier, and Government range management policies as implemented under acts of Congress cannot be asserted to bar sanctions where trespasses have been proved, or to estop BLM from alleging trespasses.

An administrative law judge's finding that trespasses were willful, grossly negligent, and repeated will not be disturbed on appeal where the record amply supports such finding.

Where penalties imposed by two administrative law judges for trespasses are supported by the records and comport with the proscriptions of the regulations they will not be modified on appeal except insofar as they conflict with respect to a particular grazier in a particular grazing district.

Bureau of Land Management v. Holland Livestock Ranch et al., 39 IBLA 272 (Feb. 15, 1979) 86 I.D. 133

Where an applicant for a range improvement project involving alteration of the native range by reseeding with non-native species and requiring the expenditure of a large sum of public funds does not show that there is an urgent situation requiring immediate improvement of the range as proposed, a decision by the BLM range manager denying the application because management framework and allotment management plans have not been formulated is properly affirmed, as, ordinarily, such a venture should not be undertaken without the type of information these plans are intended to provide.

Lyle Sorensen, Jon L. Sorensen, Kenneth Jones, 41 IBLA 354 (July 20, 1979)

Past trespass, trespass damages, and trespass settlements may properly be considered in determining whether trespasses are repeated for the purpose of computing the damages to be assessed.

Bureau of Land Management v. Harris Brothers, 47 IBLA 48 (July 31, 1979)

Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. Protection and management of Federal range lands is a continuing responsibility and may not be divested through agreement with a private party. An allotment management plan is not such a permanently binding contract that the grazing user's refusal to agree to changes precludes BLM from modifying or vacating the plan upon a finding, rationally based, that the plan is inconsistent with BLM objectives and good range management.

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bert N. Smith, Paul Smith v. Bureau of Land Management, 48 IBLA 385 (July 11, 1980)

Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. Where under 43 CFR 4120.2-4(d) BLM has discretionary authority to require ear-tagging to control unauthorized grazing use or to promote the orderly administration of public lands, a refusal to issue ear tags reasonably related to the protection of public lands will be sustained.

Kenneth H. and Doris N. Earp, 50 IBLA 235 (Sept. 30, 1980)

In ascertaining the reasonableness of a rental rate increase for grazing lands permitted under authority of 25 CFR Part 151, it was error for the Administrative Law Judge to conclude that "fair annual return" to which Indian landowners are entitled under the regulations is "something different and less than fair market value."

The independent market survey utilized by the Bureau of Indian Affairs in justifying an increase in grazing rental rates on the Fort Berthold Reservation cannot be regarded as invalid on grounds that off-reservation transactions were included in the survey.

In reviewing action of the Bureau of Indian Affairs in raising grazing rental rates, the Board of Indian Appeals should overturn the action only if it is found to be unreasonable. As long as the Bureau's action is supported in law and by substantial evidence, it would be an inappropriate intrusion into the Bureau's function for the Board to substitute its judgment for the agency's.

Fort Berthold Land and Livestock Association v. Area Director, Aberdeen Area Office, Bureau of Indian Affairs, 8 IBIA 230 (Feb. 20, 1981) 88 I.D. 315

An Administrative Law Judge's finding that trespasses were willful, grossly negligent, and repeated will not be disturbed on appeal where the record amply supports such finding.

Where penalties imposed by an Administrative Law Judge for trespasses are supported by the record and comport with the proscriptions of the regulations they will not be modified on appeal unless it appears that they are unreasonable, inequitable, or otherwise inappropriate.

Bureau of Land Management v. Holland Livestock Ranch and John J. Casey, 54 IBLA 247 (Apr. 27, 1981)

Decisions rejecting applications for a free-use and a fee grazing permit are properly upheld where the applicant does not meet the qualifications for a free-use permit under 43 CFR 4130.3 and where the entire adjudicated grazing capacity of the allotments involved has been allocated to other permittees and uses.

Kent Gregersen v. Bureau of Land Management, 61 IBLA 381 (Feb. 17, 1982)

Where grazing licensees have executed a valid range line agreement approved by this Department, such an agreement has generally been treated by the Department as an enforceable contract. Therefore, those items specifically spelled out in the agreement which are unmistakably clear are binding upon the parties unless changed by their mutual consent with the approval of the Bureau of Land Management.

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Bureau of Land Management v. Wagon Wheel Ranch, Inc., 62 IBLA 55 (Feb. 25, 1982)

Where facts and law are properly set forth and applied in Administrative Law Judge's decision dismissing an appeal from the BLM District Manager's rejection of appellant's grazing application, and appellant has made no showing that the decision is in error, the decision may be adopted by the Board of Land Appeals and affirmed.

John Pspil, 65 IBLA 231 (July 9, 1982)

11 Lic + Perm. (Cont.)

An appeal relating to grazing administration is properly dismissed by an Administrative Law Judge where the only issues in dispute are clearly defined in the regulations in 43 CFR Subpart 4100, which were correctly followed and applied by the Bureau of Land Management. Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

Ruskin Lines, Jr. v. Bureau of Land Management, 66 IBLA 109 (Aug. 10, 1982)

Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. Under 43 CFR 4120.4(d) BLM has discretionary authority to require ear-tagging to control unauthorized grazing use or to promote the orderly administration of public lands and a decision requiring that domestic livestock be ear-tagged will be sustained where the record establishes a rational basis therefor.

C-Punch Corp., 67 IBLA 293 (Sept. 29, 1982)

Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. Under 43 CFR 4120.4(d), BLM has discretionary authority to require marking and counting to control unauthorized grazing use or to promote the orderly administration of public lands. A decision requiring that domestic livestock be marked and counted will be sustained where the record establishes a rational basis therefor.

Cook Sheep Company Trust, 70 IBLA 348 (Feb. 3, 1983)

12. Range Surveys

A determination by the Bureau of Land Management of the carrying capacity of a unit of the Federal range, based on a range survey, will not be disturbed in the absence of positive evidence of error.

Eugene Allen, Lloyd Chappell v. Bureau of Land Management; Alfred Glen Deleeuw v. Bureau of Land Management, 65 IBLA 196 (June 29, 1982)

A determination by the Bureau of Land Management of the carrying capacity for a unit of the Federal range will be reversed where substantial evidence establishes error in the determination.

Chris Claridge v. Bureau of Land Management, 71 IBLA 46 (Feb. 18, 1983)

14 TRANSFER

.1 Base Property

A timely transfer of grazing license privileges to new base property may be made only while the original base property is within the ownership or control of the licensee, and transfer may not be made following sale of the original property.

Jimmie and Leona Ferrara, 47 IBLA 335 (May 21, 1980)

15 TRESPASS

.1 GENERAL

Where the evidence as to specific trespass indicates that of a number of cattle counted some were located on private intermingled land, but there were no barriers, either natural or artificial, which would have prevented the cattle on private land from going onto the public land, it is proper to find that all cattle counted would tend to consume forage at a rate proportional to the ratio of forage available on private and public lands.

An administrative law judge's finding that trespasses were willful, grossly negligent, and repeated will not be disturbed on appeal where the record amply supports such finding.

Where penalties imposed by two administrative law judges for trespasses are supported by the records and comport with the proscriptions of the regulations they will not be modified on appeal except insofar as they conflict with respect to a particular grazier in a particular grazing district.

Bureau of Land Management v. Holland Livestock Ranch et al., 39 IBLA 272 (Feb. 15, 1979) 86 I.D. 133

Past trespass, trespass damages, and trespass settlements may properly be considered in determining whether trespasses are repeated for the purpose of computing the damages to be assessed.

Where the evidence shows that the commercial rate for forage ranged from $2.50 to $9.50 per AUM, an Administrative Law Judge's computation of damages, using $3.°° as the base figure, cannot be said to be unreasonable under 43 CFR 9239.3-2 (1976).

Bureau of Land Management v. Harris Brothers, 45 IBLA 48 (July 31, 1979)

In determining whether grazing trespasses are "willful," intent sufficient to establish willfulness may be shown by proof of facts which objectively show that the circumstances do not comport with the action that the trespasser acted in good faith or innocent mistake, or that his or her conduct was so lacking in reasonableness or responsibility that it became reckless or negligent.

Holland Livestock Ranch and John J. Casey, 52 IBLA 326 (Feb. 19, 1981) 88 I.D. 275

An Administrative Law Judge's finding that trespasses were willful, grossly negligent, and repeated will not be disturbed on appeal where the record amply supports such finding.

Where penalties imposed by an Administrative Law Judge for trespasses are supported by the record and comport with the proscriptions of the regulations they will not be modified on appeal unless it appears that they are unreasonable, inequitable, or otherwise inappropriate.

Bureau of Land Management v. Holland Livestock Ranch and John J. Casey, 54 IBLA 247 (Apr. 27, 1981)

16 Wild and FREE ROAMING HORSES and BURROS

WILD AND FREE-ROAMING HORSES AND BURROS

Where the Bureau of Land Management has retained custody of wild free-roaming horses, adopted pursuant to the Act of Dec. 15, 1971, as amended, 16 U.S.C.A. § 1331 (West Supp. 1980), on the basis that the horses have been commercially exploited and the case presents substantial issues of fact, the assignees under the original cooperative agreements are entitled to a hearing before an Administrative Law Judge.

Geneva Barry et al., 54 IBLA 48 (Apr. 9, 1981)

17.1 GRAZING LEASES - GENERAL

~~GRAZING LEASES~~

17.1 GENERALLY

An area manager's decision apportioning lands between two grazing lease applicants ordinarily will not be disturbed where both applicants have equal preference rights, the apportionment is consistent with the regulatory criteria of 43 CFR 4121.2-1(d)(2), and the decision is not shown to be arbitrary or capricious. However, where a new statute, sec. 402 of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1752(c) (West Supp. 1978), dictates that in certain circumstances "the holder of the expiring permit or lease shall be given first priority for receipt of the new permit or lease," the apportionment must be conformed therewith.

In view of 43 U.S.C.A. § 1752(c) (West Supp. 1978), which dictates that in certain circumstances the present grazing user shall have a right of first refusal for any new lease, 43 CFR 4110.5 (43 FR 29070), must be read in pari materia therewith and with 43 CFR 4130.2(e) (43 FR 29072) to be construed as a valid regulation and must be interpreted not to apply where the present grazing user desires a new lease and otherwise meets the statutory and regulatory criteria.

Harvey Sheehan and Hazel Holland Mudon, 39 IBLA 56 (Jan. 16, 1979)
86 I.D. 51

A district manager's decision reached in the exercise of administrative discretion pursuant to the Taylor Grazing Act of 1934 may be regarded as arbitrary or capricious only where it is not supportable on any rational basis and the burden is on the appellant to show by substantial evidence that the decision is improper. A district manager's decision not to reissue a grazing lease for a certain area until that area is fenced and to reduce appellant's AUM's accordingly rests on a rational basis where the facts show that this unfenced area adjoins the bombing range and grazing thereon could result in trespass on the bombing range, inconsistent with the use of the range.

Under the Supremacy Clause, U.S. CONST., art. VI, cl. 2, Federal laws, including Federal grazing regulations, override conflicting State laws with respect to public lands.

Colvin Cattle Co., Inc., 39 IBLA 176 (Jan. 30, 1979)

Where two conflicting grazing lease applications are filed under the Taylor Grazing Act, as amended, 43 U.S.C. § 314m (1976), and one applicant owns base property of 320 acres which supports a preference right for the grazing lease, which base property the other applicant formerly leased from a previous owner to support a grazing lease, the grazing lease is properly issued to the applicant who is the present owner of the base property because such property has historically been used in connection with that grazing lease and the base controlled by the other applicant is only 80 acres.

A decision of the district manager rejecting a grazing lease application will not be disturbed on appeal in the absence of a showing that the decision is not reasonable or does not comport with statutory or regulatory standards, and where the decision appealed from is consonant with good range management.

Ted Crum, 40 IBLA 129 (Mar. 28, 1979)

In view of 43 U.S.C. § 1752(c) (1976), which dictates that in certain circumstances the holder of the expiring grazing lease shall be given first priority for receipt of the new lease, a district manager's decision apportioning lands between conflicting lease applicants will not be disturbed where holders of the expiring lease receive the land except for a portion and do not appeal the award of the portion to a conflicting applicant, thus waiving their preference right to said portion.

Cub River Stockmen's Ass'n, 42 IBLA 26 (July 26, 1979)

Where BLM renewed an Alaska grazing lease on lands for which the State of Alaska had previously filed a selection application, and where it first expressly advised the lessee that his lease would be subject to cancellation when the State's application was resolved, BLM may cancel the lease following tentative approval of the State selection application preparatory to transferring control over the lands to the State, as 43 CFR 4230.1 gives it the authority to cancel Alaska grazing leases to permit utilization of the land for other purposes in the public interest.

Estate of C. Walter Keaster, 47 IBLA 363 (May 21, 1980)

17 GRAZING LEASES

.2 APPLICATIONS

APPLICATIONS

Where two conflicting grazing lease applications are filed under the Taylor Grazing Act, as amended, 43 U.S.C. § 315b (1976), and one applicant owns base property of 320 acres which supports a preference right for the grazing lease, which base property the other applicant formerly leased from a previous owner to support a grazing lease, the grazing lease is properly issued to the applicant who is the present owner of the base property because such property has historically been used in connection with that grazing lease and the base controlled by the other applicant is only 80 acres.

A decision of the district manager rejecting a grazing lease application will not be disturbed on appeal in the absence of a showing that the decision is not reasonable or does not comport with statutory or regulatory standards, and where the decision appealed from is consonant with good range management.

Ted Crum, 40 IBLA 129 (Mar. 28, 1979)

Where an applicant for a grazing lease has committed repeated, willful trespasses on the public lands resulting in the cancellation of the applicant's grazing preference, the area manager may properly reject an application to lease on the basis that it would not be in the best interest of proper range management to issue a lease to the applicant in preference over other qualified applicants for the same land.

James M. Stoos, 57 IBLA 394 (Sept. 10, 1981)

Where two conflicting applicants for a grazing lease are preference right applicants, and neither is the holder of an expiring lease, a decision awarding a grazing lease to one applicant and rejecting a conflicting application, rendered in accordance with the governing regulatory standard (43 CFR 4110.5), will not be overturned in the absence of convincing reasons that the award is not warranted.

The Corporation of the Great Southwest, 69 IBLA 333 (Dec. 28, 1982)

17 GRAZING LEASES

.3 APPORTIONMENT OF LAND

An area manager's decision apportioning lands between two grazing lease applicants ordinarily will not be disturbed where both applicants have equal preference rights, the apportionment is consistent with the regulatory criteria of 43 CFR 4121.2-1(d)(2), and the decision is not shown to be arbitrary or capricious. However, where a new statute, sec. 402 of the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. § 1752(c) (West Supp. 1978), dictates that in certain circumstances "the holder of the expiring permit or lease shall be given first priority for receipt of the new permit or lease," the apportionment must be conformed therewith.

In view of 43 U.S.C.A. § 1752(c) (West Supp. 1978), which dictates that in certain circumstances the present grazing user shall have a right of first refusal for any new lease, 43 CFR 4110.5 (43 FR 29070), must be read in pari materia therewith and with 43 CFR 4130.2(e) (43 FR 29072) to be construed as a valid regulation and must be interpreted not to apply where the present grazing user desires a new lease and otherwise meets the statutory and regulatory criteria.

Harvey Sheehan and Hazel Holland Hudon, 39 IBLA 56 (Jan. 16, 1979) 86 I.D. 51

In view of 43 U.S.C. § 1752(c) (1976), which dictates that in certain circumstances the holder of the expiring grazing lease shall be given first priority for receipt of the new lease, a district manager's decision apportioning lands between conflicting lease applicants will not be disturbed where holders of the expiring lease receive the land except for a portion and do not appeal the award of the portion to a conflicting applicant, thus waiving their preference right to said portion.

Cob River Stockman's Ass'n, 42 IBLA 26 (July 26, 1979)

17 GRAZING LEASES

.5 CANCELLATION OR REDUCTION

A district manager's decision reached in the exercise of administrative discretion pursuant to the Taylor Grazing Act of 1934 may be regarded as arbitrary or capricious only where it is not supportable on any rational basis and the burden is on the appellant to show by substantial evidence that the decision is improper. A district manager's decision not to reissue a grazing lease for a certain area until that area is fenced and to reduce appellant's AUM's accordingly rests on a rational basis where the facts show that this unfenced area adjoins the bombing range and grazing thereon could result in trespass on the bombing range, inconsistent with the use of the range.

Colvin Cattle Co., Inc., 39 IBLA 176 (Jan. 30, 1979)

A grazing lease issued under the Alaska Grazing Act, 43 U.S.C. § 316 et seq. (1970), appropriates the lands and segregates them from the public domain, barring them from use and occupancy for Native allotment purposes until the Department takes action to exclude lands from the lease.

Herman Anderson, Jr., Nicholas Pestrikoff, Anthony Frabek, 41 IBLA 296 (June 29, 1979)

17 GRAZING LEASES

16 PREFERENCE RIGHT APPLICANTS

Where two conflicting grazing lease applications are filed under the Taylor Grazing Act, as amended, 43 U.S.C. § 315m (1976), and one applicant owns base property of 320 acres which supports a preference right for the grazing lease, which base property the other applicant formerly leased from a previous owner to support a grazing lease, the grazing lease is properly issued to the applicant who is the present owner of the base property because such property has historically been used in connection with that grazing lease and the base controlled by the other applicant is only 80 acres.

Ted Crum, 40 IBLA 129 (Mar. 28, 1979).

Where two preference right applicants file conflicting applications for a grazing lease, sec. 402(c) of FLPMA, 43 U.S.C. § 1752(c) (1976), mandates issuance of the new lease to the holder of the expiring lease provided that the holder of the expiring lease maintains his or her preference right qualifications and is otherwise in conformance with the applicable rules and regulations.

Earl B. Platt, 43 IBLA 41 (Sept. 18, 1979) See T.L. also 458

Where an applicant for a grazing lease has committed repeated, willful trespasses on the public lands resulting in the cancellation of the applicant's grazing preference, the area manager may properly reject an application to lease on the basis that it would not be in the best interest of proper range management to issue a lease to the applicant in preference over other qualified applicants for the same land.

James H. Stogs, 57 IBLA 390 (Sept. 10, 1981)

Where two preference right applicants file conflicting applications for a grazing lease, sec. 402(c) of the Federal Land Policy and Management Act, 43 U.S.C. § 1752(c) (1976), mandates issuance of the new lease to the holder of the expiring lease provided that the holder of the expiring lease maintains his or her preference right qualifications and is otherwise in conformance with the applicable rules and regulations. However, where 43 U.S.C. § 1752(c) (1976) is not applicable, allocation of grazing privileges pursuant to 43 CFR 4110.5 is proper.

Bureau of Land Management v. Alfredo B. Hasz, 67 IBLA 69 (Sept. 13, 1982)

Where two conflicting applicants for a grazing lease are preference right applicants, and neither is the holder of an expiring lease, a decision awarding a grazing lease to one applicant and rejecting a conflicting application, rendered in accordance with the governing regulatory standard (43 CFR 4110.5), will not be overturned in the absence of convincing reasons that the award is not warranted.

The Corporation of the Great Southwest, 69 IBLA 333 (Dec. 28, 1982)

17 GRAZING LEASES

.7 RENEWAL

Where two preference right applicants file conflicting applications for a grazing lease, sec. 402(c) of FLPMA, 43 U.S.C. § 1752(c) (1976), mandates issuance of the new lease to the holder of the expiring lease provided that the holder of the expiring lease maintains his or her preference right qualifications and is otherwise in conformance with the applicable rules and regulations.

Earl E. Platt, 43 IBLA 81 (Sept. 18, 1979) 88 I.D. 458

RENEWAL

Where two preference right applicants file conflicting applications for a grazing lease, sec. 402(c) of the Federal Land Policy and Management Act, 43 U.S.C. § 1752(c) (1976), mandates issuance of the new lease to the holder of the expiring lease provided that the holder of the expiring lease maintains his or her preference right qualifications and is otherwise in conformance with the applicable rules and regulations. However, where 43 U.S.C. § 1752(c) (1976) is not applicable, allocation of grazing privileges pursuant to 43 CFR 4110.5 is proper.

Bureau of Land Management v. Alfredo R. Baez, 67 IBLA 89 (Sept. 13, 1982)

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